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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,307	11/04/2003	Nobutoshi Asai	09792909-5729	5037
26263	7590	07/11/2011		
SNR DENTON US LLP			EXAMINER	
P.O. BOX 061080			VAN ROY, TOD THOMAS	
CHICAGO, IL 60606-1080				
			ART UNIT	PAPER NUMBER
			2828	
			MAIL DATE	DELIVERY MODE
			07/11/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Advisory Action  
Before the Filing of an Appeal Brief***

**Application No.**

10/701,307

**Applicant(s)**

ASAI ET AL.

**Examiner**

TOD T. VAN ROY

**Art Unit**

2828

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 21 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☒ Other: The Examiner notes the claim amendments are not entered as outlined above. The Examiner wishes to respond to the Applicant's arguments in an effort to further prosecution.

Firstly the Applicant has argued that Yamada discloses a first electrode made of a light reflective material and a second electrode made of a transparent material citing col.7 lines 1-21. The Examiner points out that the second electrode in this passage is stated as element #15. In the office action the Examiner points to element #14 as being the second electrode as Yamada teaches at col.6 lines 63-67 that the layer functions as a cathode. This element #14 is taught to be a semi-transparent reflection layer, which is synonymous with partially reflective. The Examiner further points out that these 'reflective' and 'semi-transparent' labels are being applied by Yamada with respect to generated light 'h', not incident external light 'H1' as taught at col.8 lines 6-21, col.12 lines 48-64, and fig.19

Secondly the Applicant has argued that the phase portion of the claim is not satisfied since one layer is reflective while the other is transparent. The Examiner first points to the above arguments to distinguish that both layers are at least partially reflective. Secondly, Yamada teaches that the very same equation that the Applicant claims accomplishes the phase requirement as outlined by Yamada in the abstract, summary of invention, and col.7 wherein the material indices, thickness and compositions are outlined.

The Applicant has finally argued that the strength portion of the claim is not satisfied as one layer is reflective while the other is transparent. The Examiner first points to the above arguments to distinguish that both layers are at least partially reflective. Secondly Yamada teaches at col.12 lines 48-64 that the cavity region should be minimally reflective at the wavelength of incident outside light. Thus both electrodes should be of the same, substantially low reflectance for the outside light. The Examiner also notes that the 103 portion of the claim motivates that both of the electrodes should have a reflectance of outside light below 20 percent thus making them of

/TOD T VAN ROY/  
Primary Examiner, Art Unit 2828